

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 04-1749

WILLIAM A. TACCINO,

Plaintiff - Appellant,

versus

NATIONAL RURAL LETTER CARRIERS ASSOCIATION;
GUS BAFFA, President,

Defendants - Appellees.

Appeal from the United States District Court for the District of
Maryland, at Baltimore. J. Frederick Motz, District Judge.
(CA-03-2373-JFM)

Submitted: November 30, 2004

Decided: January 26, 2005

Before LUTTIG, WILLIAMS, and GREGORY, Circuit Judges.

Vacated and remanded by unpublished per curiam opinion.

William A. Taccino, Appellant Pro Se. Michael J. Gan, PEER & GAN,
Washington, D.C., for Appellees.

Unpublished opinions are not binding precedent in this circuit.
See Local Rule 36(c).

PER CURIAM:

William A. Taccino appeals the district court's order granting summary judgment to Defendant in this civil action alleging breach of the duty of fair representation. For the reasons set forth below, we vacate and remand for further proceedings.

A review of the record discloses that Defendant moved for summary judgment, and that Defendant submitted affidavits and other materials in support of its motion. Citing, *inter alia*, Taccino's failure to present evidence, the district court granted Defendant's motion. The district court did not provide Taccino with the notice required by Roseboro v. Garrison, 528 F.2d 309, 310 (4th Cir. 1975).

Roseboro prohibits the entry of summary judgment based on a pro se party's failure to submit affidavits supporting his allegations unless such party is given a reasonable opportunity to file counter-affidavits or other appropriate materials and is informed that failure to file such a response may result in dismissal of the action. Id.

Although Taccino responded to Defendant's summary judgment motion, he did not submit any affidavits in support of his claims. The district court granted Defendant's motion, in part, based on Taccino's failure to produce such supporting evidence. On this record, we cannot find that the district court's failure to

provide Roseboro notice was harmless error. See Fed. R. Civ. P. 61; Fed. R. Civ. P. 56(e). We therefore vacate the district court's order granting summary judgment to Defendant and remand this case to the district court with instructions to provide Taccino with the notice and opportunity to respond to which he is entitled.

We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process. The reason for remand is entirely procedural and is unrelated to the merits of the case.

VACATED AND REMANDED